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STATE FOR AF/S GABRIELLE MALLORY  
STATE FOR INR/AA

E.O. 12958: N/A

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SUBJECT: POLITICAL ASSESSMENT OF UPCOMING CONSTITUTIONAL REVIEW

**¶11. (SBU)** Summary: Malawi is scheduled to begin a constitutional review process starting this June/July. The entire process has already become politicized, as both government and opposition seek to use the review to strengthen their respective political positions. The opposition is focused primarily on weakening the presidency to the benefit of Parliament, where the President's party is currently in the minority. For its part, the government will seek changes meant to maintain its current position of power, strengthen the presidency, and keep the President's political opponents sidelined. Malawi's robust civil society also promises to play a part in the process, as it pushes for various changes to the political structure and qualifications of public officials. End Summary.

**¶12. (SBU)** The current Constitution, adopted in 1995, will be revised through a process centering on a constitutional review conference. During the 2005/6-budget session, Parliament approved a \$360,000 allocation to the Malawi Law Commission for the review process, and the European donors (led by the European Commission) are signed on to kick in at least an additional \$360,000.

#### Opposition Wish-list

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**¶13. (SBU)** The opposition parties would like to trim the powers of the President, and want to require a president who withdraws from his party (such as President Bingu wa Mutharika) to seek a fresh mandate from voters. The opposition is also interested in setting a maximum age limit for presidential candidates; requiring that candidates amass at least 51% of the vote to win (as opposed to a plurality); and making it harder for MPs to switch parties, or become independent, after elected.

#### The Government Agenda

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**¶14. (SBU)** The Government side is looking to strengthen the presidency, while putting up barriers to prevent former President Bakili Muluzi from re-entering politics. They would like to allow the president to be able to directly appoint, and fire, his vice-president; tighten presidential term limits put forth in the constitution (making it impossible for Muluzi to run for President again); and change the composition of the electoral commission to include parties, such as the DPP, that have arisen over the last four years.

**¶15. (U)** In addition to these purely political changes, government is also interested in doing away with the costly position of Second Vice-President, and adding a "Bill of Duties" to the constitution. This would lay out the "duties" of citizens, in addition to their rights.

#### Civil Society

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**¶16. (U)** Civil Society organizations are also expected to push their various, and in many cases controversial, agendas during the review process. They would like to see a reconstitution of the Senate, which was abolished in 1995; an amendment to provide additional parliamentary seats for representatives of special interest groups, including youth, women, orphans, and people with disabilities; the reinstatement of a recall provision for MPs, which makes it possible to impeach them for poor performance; and mandatory educational qualifications for presidential appointees.

#### Comment

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**¶17. (SBU)** Comment: While there are some areas where the Malawian constitution could be strengthened, it is generally considered to be fairly complete. Minor changes could be

made to the constitution at the parliamentary level, such as making amendments more difficult to pass, that would make it a stronger document. The chameleon-like tendency of Malawi's politicians to continually change parties and form alliances has exposed some gaps in the current constitution. However, these changes hardly seem to warrant a full-scale (and costly) convention, especially in these politically tumultuous times. Nonetheless, it appears that both the government and opposition, supported by the European donors, are intent on following through with the review process.

**18.** (SBU) The agendas of the Government and Opposition are clearly influenced by current political objectives. Measures to curtail the rights of ex-Presidents and current Vice-Presidents would directly affect the two leading opponents of President Mutharika, while the proposed reduction in Presidential powers would have the opposite effect. In the end, the long-term success of the new Constitution is likely to be compromised by short-sighted political maneuvering by Malawi's leaders.